

KART BROADCASTING CO., INC.

IBLA 94-506

Decided June 3, 1997

Appeal from a decision of the Area Manager, Bennett Hills Resource Area, Idaho, Bureau of Land Management, increasing the annual rental for communications site right-of-way IDI-23104.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way--Res Judicata--Rights-of-Way: Appraisals

In accordance with section 10003 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 405 (1993), BLM properly requires the holder of a communications site right-of-way to pay, for fiscal year 1994, an annual rental 10 percent above the amount charged for fiscal year 1993.

APPEARANCES: Allen D. Lee, President, KART Broadcasting Company, Inc., Jerome, Idaho, for KART Broadcasting Company, Inc.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On May 2, 1994, the Area Manager, Bennett Hills Resource Area, Idaho, Bureau of Land Management (BLM), increased the annual rental for fiscal year 1994 from the previous amount of \$2,000 for fiscal year 1993 to \$2,200 for communications site right-of-way, IDI-23104, located atop Flat Top Butte in south-central Idaho. The Area Manager stated that section 10003 of the Omnibus Budget Reconciliation Act of 1993 (the Act), Pub. L. No. 103-66, 107 Stat. 405 (1993), directed it to assess and collect an annual rental payment on communication site rights-of-way at a rate of 10 percent above the rental paid for the 1993 fiscal year. The right-of-way holder, KART Broadcasting Company, Inc. (KART), filed a timely appeal.

On September 19, 1986, BLM granted the subject right-of-way to KART, effective March 10, 1986, for a term of 10 years, subject to renewal, pursuant to Title V of the Federal Land Policy and Management Act of 1976

(FLPMA), as amended, 43 U.S.C. §§ 1761-1771 (1994). Under the grant, which replaced a previous right-of-way grant, KART was authorized to continue use of 0.432 acres of public land situated in the S½ NW¼ sec. 13, T. 8 S., R. 17 E., Boise Meridian, Jerome County, Idaho, for FM radio transmitting and other communications equipment, subject to payment of annual rental.

Annual rental was initially set in 1986 at \$1,800 per year. On February 14, 1992, BLM increased the annual rental to \$2,000, based on a February 7, 1992, reappraisal. In May 1994, BLM increased the annual rental 10 percent to \$2,200.

On appeal, KART's arguments are directed at showing the unreasonableness of BLM's fair market rental value for its right-of-way. It asserts that there is no reason for the rent to increase so much for "a barren sage brush hill." It contends:

If these increases are to continue then the property should be put up for sale to the occupants and sold for their actual value.

As to the value, for comparison our company recently purchased an antenna site that serves all of southeast Idaho and is of the highest quality soil for a total price of \$7000 for ten acres.

[1] Under section 504(g) of FLPMA, as amended, 43 U.S.C. § 1764(g) (1994), BLM is required to charge an annual rental for communication sites and other rights-of-way based on their "fair market value." See 43 C.F.R. § 2803.1-2(a). However, BLM's action in this case did not establish the fair market value for KART's right-of-way. It merely carried out the mandate of Congress:

Notwithstanding any other provision of law, for fiscal year 1994, the Secretary of * * * the Interior shall assess and collect annual charges for the utilization of existing radio, television, and commercial telephone transmission communication sites located on Federal lands administered by the * * * Bureau of Land Management at a level 10 percent above the fee assessed and collected during fiscal year 1993.

107 Stat. 405 (1993).

The issues raised by KART are not relevant to whether or not BLM properly imposed a 10-percent increase in the rental for the right-of-way in question. The BLM was required to comply with the Act. Michael D. Dahmer, 132 IBLA 17, 27 (1995). It, thus, could not mitigate or eliminate the increase. We must affirm.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we conclude that BLM properly imposed a 10-percent increase in KART's rental for fiscal year 1994.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge